

USAEO-Candidates

From: Griffin, Tim (USAARE)
Sent: Tuesday, November 14, 2006 4:46 PM
To: USAEO-Candidates
Cc: Nowacki, John (USAEO)
Subject: RE: Interview

Debbie, Thank you for the email. My resume is at home, but I will email it tomorrow. Our VTC Contact in the Eastern District is Elaine Dawson at 501 340 2644. Thanks, Tim

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Dear Tim:

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Your interview will be conducted by:

Monica M. Goodling
Senior Counsel to the Attorney General

David Margolis
Associate Deputy Attorney General

Michael A. Battle
Director, EOUSA

Please confirm receipt of this email with a copy of your updated resume and the VTC Contact in your district.

If you have any questions, please call me or John Nowacki on 202/514-2121.

Thank you,
Debbie

Deborah L. Hardos
Management and Program Analyst
Executive Office for United States Attorneys
950 Pennsylvania Avenue, Room 2523
Washington, D.C. 20530-0001
Ph 202-616-2840
Fax 202-616-2278

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From: USAEO-Candidates
Sent: Tuesday, November 14, 2006 4:47 PM
To: Griffin, Tim (USAARE)
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Tomorrow is fine.
Thanks, Tim.

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Tracking:

Recipient

Griffin, Tim (USAARE)

Read

Read: 11/14/2006 4:51 PM

USAEO-Candidates

From: Nowacki, John (USAEO)
Sent: Tuesday, November 14, 2006 4:48 PM
To: Griffin, Tim (USAARE); USAEO-Candidates
Subject: RE: Interview

Tim -- In addition to your résumé, if you have a sort of narrative bio, would you please forward that as well?

Thanks very much.
John

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USAE0-Candidates

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From: Griffin, Tim (USAARE)
Sent: Tuesday, November 14, 2006 4:53 PM
To: Nowacki, John (USAE0); USAE0-Candidates
Subject: RE: Interview

No problem. Thanks, TG

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I'll check and get back to you.

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Tracking:

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Read: 11/14/2006 4:58 PM

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From: Griffin, Tim (USAARE)
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Great. Thanks, TG

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From: Griffin, Tim (USAARE)
Sent: Wednesday, November 15, 2006 4:26 PM
To: USAEO-Candidates
Cc: Nowacki, John (USAEO)
Subject: RE: Interview

Attachments: bio2006.doc; dojresume.doc

Please find the attached resume and narrative bio. Let me know if you need additional information.
Thank you, TG



bio2006.doc (37 KB)



dojresume.doc (81 KB)

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JOHN TIMOTHY "TIM" GRIFFIN

In September 2006, Tim Griffin was named Counselor to the Assistant Attorney General, Criminal Division, at the U.S. Department of Justice in Washington, D.C. and was immediately detailed to Little Rock, Arkansas, where he is serving as a Special Assistant U.S. Attorney in the Eastern District of Arkansas.

Tim recently completed a year of active duty in the U.S. Army. He is in his 10th year as an officer in the U.S. Army Reserve, Judge Advocate General's (JAG) Corps and holds the rank of Major. In September 2005, Tim was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Kentucky, the home of the 101st Airborne Division (Air Assault). At Fort Campbell, he prosecuted 40 criminal cases. One of those cases, U.S. v. Mikel, drew national interest after Private Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Private Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

In May 2006, Tim was assigned to the 501st Special Troops Battalion (STB), 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team (SBCT) Brigade Operational Law Team (BOLT), for which he was awarded the Combat Action Badge and the Army Commendation Medal.

When he was called to active duty in September 2005, Tim was serving as Special Assistant to the President and Deputy Director, Office of Political Affairs at the White House. In that capacity, he advised President George W. Bush and Vice-President Richard B. Cheney and organized and coordinated support for the President's agenda, including the nomination of Judge John Roberts to be Chief Justice of the U.S. Supreme Court.

Prior to joining the White House staff, he served as Research Director and Deputy Communications Director for the Republican National Committee (RNC) where he oversaw research for the 2004 presidential campaign. Tim and his staff of approximately 30 provided research materials to the Bush-Cheney re-election campaign, the RNC, the press, and political activists.

From 2001-2002, Tim served as a political appointee at the U.S. Department of Justice where he was Special Assistant to the Assistant Attorney General, Michael Chertoff, the Criminal Division Chief. In the summer of 2001, AAG Chertoff granted Tim a year detail as a Special Assistant U.S. Attorney at the U.S. Attorney's Office for the Eastern District of Arkansas in Little Rock. While in Little Rock, Tim prosecuted a variety of federal cases with an emphasis on firearm and drug cases. He also organized the Eastern District's Project Safe Neighborhoods (PSN), the Bush Administration's initiative to reduce firearm-related violence by ~~promoting close cooperation between state and federal law enforcement, and served as the PSN coordinator.~~

Prior to joining DOJ, Tim served as RNC Deputy Research Director for the 2000 presidential campaign and as a legal advisor to the Bush-Cheney Recount Team in Florida. Tim has also served as Senior Counsel to the Government Reform Committee, U.S. House of Representatives; Associate Independent Counsel, In Re: Housing and Urban Development (HUD) Secretary Henry Cisneros; and as an associate attorney with the New Orleans law firm of Jones, Walker.

Tim is a member of the Arkansas and Louisiana bars. He is a *cum laude* graduate of both Hendrix College in Conway, Arkansas, where he received his B.A., and Tulane Law School in New Orleans, Louisiana, where he received his J.D. He also attended graduate school at Pembroke College, Oxford University, in Oxford, England. Tim was born in Charlotte, North Carolina, was raised in Magnolia, Arkansas, and now resides in Little Rock, Arkansas, with his wife, Elizabeth.

J. TIMOTHY GRIFFIN

EDUCATION

Tulane University Law School. New Orleans, Louisiana. Juris Doctor, *cum laude*, May 1994. Cumulative G.P.A.: 3.25/4.00; Rank: 80/319, Top 25%. Common law and civil law curricula. Legal Research and Writing grade: A.

- Senior Fellow, Legal Research and Writing Program. Taught first year law students legal research and writing.
- Volunteer, The New Orleans Free Tutoring Program, Inc.

Oxford University, Pembroke College. Oxford, England. Graduate School, British and European History, 1990-1991.

- Under-secretary and Treasurer, Oxford University Clay Pigeon Shooting Club.

Hendrix College. Conway, Arkansas. Bachelor of Arts in Economics and Business, *cum laude*, June 1990. Cumulative G.P.A.: Major 3.79/4.00, Overall 3.78/4.00; Rank: 22/210, Top 10%.

- Oxford Overseas Study Course, September 1988-May 1989, Oxford, England.

LEGAL EXPERIENCE

Counselor to the Assistant Attorney General. Criminal Division, U.S. Department of Justice. Washington, D.C. and Little Rock, Arkansas. September 2006-present.

- Serving as a Special Assistant U.S. Attorney, Eastern District of Arkansas, September 2006-present.

Trial Counsel, U.S. Army JAG Corps. Criminal Law Branch, Office of the Staff Judge Advocate. Fort Campbell, Kentucky, September 2005-May 2006; August-September 2006.

- Successfully prosecuted U.S. v. Mikel, involving a soldier's attempted murder of his platoon sergeant.
- Provided legal advice to E Co., 1st and 3rd Brigade Combat Teams, 101st Airborne Division (Air Assault)(R)(P).
- Prosecuted 40 Army criminal cases at courts-martial and federal criminal cases as a Special Assistant U.S. Attorney, Western District of Kentucky and Middle District of Tennessee, and handled 90 administrative separations.

Brigade Judge Advocate, U.S. Army Judge Advocate General's (JAG) Corps. Operation Iraqi Freedom. Task Force Band of Brothers. 501st STB, 101st Airborne Division (Air Assault). Mosul, Iraq, May-August 2006.

- Served on the Brigade Operational Law Team (BOLT), 172d Stryker Brigade Combat Team, FOB Marez, Iraq.
- Provided legal advice on various topics, including financial investigations, rules of engagement, and rule of law.

Special Assistant to the Assistant Attorney General. Criminal Division, U.S. Department of Justice. Washington, D.C. and Little Rock, Arkansas. March 2001-June 2002.

- Tracked issues for Assistant Attorney General Michael Chertoff and worked with the Office of International Affairs (OIA) on matters involving extradition, provisional arrest and mutual legal assistance treaties (MLATs).
- Prosecuted federal firearm and drug cases and served as the coordinator for Project Safe Neighborhoods, a strategy to reduce firearm-related violence through cooperation between state and federal law enforcement, as a Special Assistant U.S. Attorney, Eastern District of Arkansas, in Little Rock, September 2001-June 2002.

Senior Investigative Counsel. Committee on Government Reform, U.S. House of Representatives. Washington, D.C. January 1997-February 1998; June 1998-September 1999.

- Developed hearing series entitled "National Problems, Local Solutions: Federalism at Work" to highlight innovative and successful reforms at the state and local levels, including: "Fighting Crime in the Trenches," featuring New York City Mayor Rudolph Giuliani, and "Tax Reform in the States."
- Pursuant to the Committee's campaign finance investigation, interviewed Johnny Chung and played key role in hearing detailing his illegal political contributions; organized, supervised and conducted the financial investigation of individuals and entities; interviewed witnesses; drafted subpoenas; and briefed Speaker of the House Newt Gingrich.

Associate Independent Counsel. U.S. Office of Independent Counsel David M. Barrett. *In re: Henry G. Cisneros, Secretary of Housing and Urban Development (HUD)*. Washington, D.C. September 1995-January 1997.

- Interviewed numerous witnesses with the F.B.I. and supervised the execution of a search warrant.
- Drafted subpoenas and pleadings and questioned witnesses before a federal grand jury.

Associate Attorney. General Litigation Section. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. New Orleans, Louisiana. September 1994-September 1995.

- Drafted legal memoranda and pleadings and conducted depositions.

ADDITIONAL WORK EXPERIENCE

Special Assistant to the President and Deputy Director. Office of Political Affairs, The White House. Washington, D.C. April-September 2005. On military leave after mobilization to active duty, September 2005-September 2006.

- Advised President George W. Bush and Vice-President Richard B. Cheney.
- Organized and coordinated support for the President's agenda, including the nomination of Judge John Roberts to be Chief Justice of the U.S. Supreme Court.

Research Director and Deputy Communications Director. 2004 Presidential Campaign, Republican National Committee (RNC). Washington, D.C. June 2002-December 2004.

- Briefed Vice-President Richard B. Cheney and other Bush-Cheney 2004 (BC04) and RNC senior staff.
- Managed RNC Research, the primary research resource for BC04, with over 25 staff.
- Worked daily with BC04 senior staff on campaign and press strategy, ad development and debate preparation.

Deputy Research Director. 2000 Presidential Campaign, Republican National Committee (RNC). Washington, D.C. September 1999-February 2001.

- Managed RNC Research, the primary research resource for Bush-Cheney 2000 (BC00), with over 30 staff.
- Served as legal advisor in Volusia and Brevard Counties for BC00 Florida Recount Team.

SUMMARY OF MILITARY SERVICE

Major. JAG Corps, U.S. Army Reserve. Commissioned First Lieutenant, June 1996.

- Served on active duty in Mosul, Iraq with the 101st Airborne Division (Air Assault), and at Fort Campbell, Kentucky, September 2005-September 2006.
- Authorized to wear 101st Airborne Division (Air Assault) "Screaming Eagle" combat patch.
- Medals, Ribbons and Badges: Army Commendation Medal with Five Oak Leaf Clusters; Army Achievement Medal with Four Oak Leaf Clusters; Army Reserve Components Achievement Medal with Two Oak Leaf Clusters; National Defense Service Medal; Iraq Campaign Medal; Global War on Terrorism Service Medal; Armed Forces Reserve Medal with Bronze Hourglass and "M" Devices; Army Service Ribbon; and Army Reserve Overseas Training Ribbon with "3" Device; and Combat Action Badge.

ACTIVITIES AND ASSOCIATIONS

Arkansas Bar Association. Little Rock, Arkansas. Member, 1995-present. Annual Meeting Subcommittee on Technology, 2002. Admitted to Arkansas Bar, April 26, 1995.

The Federalist Society for Law and Public Policy Studies. Washington, D.C. 1991-present. President, New Orleans Lawyers Chapter, February-August 1995; President, 1993-1994, Vice President, 1992-1993, and Treasurer, 1991-1992, Tulane Law School Chapter.

Friends of Central Arkansas Libraries (FOCAL). Little Rock, Arkansas. Life Member.

Florence Crittenton Services, Inc. Little Rock, Arkansas. Member, Board of Directors, 2001-2002.

Louisiana State Bar Association. New Orleans, Louisiana. Member. Admitted October 7, 1994. Currently inactive.

The Oxford Union Society. Oxford, England. Member, 1990-present.

Pulaski County Bar Association. Little Rock, Arkansas. Member, 2001-2002. Co-chair, Law School Liaison Committee, 2001-2002.

Reserve Officers Association. Washington, D.C. Life Member.



U.S. Department of Justice

United States Attorney
Western District of Washington

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-2054

December 14, 2006

Hon. Alberto Gonzalez
Attorney General of the United States
950 Pennsylvania Ave. N.W., Room 5111
Washington, D.C. 20530

Dear Judge Gonzalez:

I have today submitted to the President my resignation as United States Attorney for the Western District of Washington, effective midnight January 26, 2007.

It has been a privilege to serve with you and the many talented men and women of the U.S. Department of Justice. I am particularly proud of the accomplishments of the prosecutors, trial attorneys and support staff whom I have been honored to lead in this District. Together, we have helped to secure our nation from terrorism, international drug crime, violent criminals and corporate fraud.

We have reestablished the unifying role of the United States Attorney as the chief federal law enforcement official with the responsibility to advance the priorities of the President and the Attorney General. In doing so, this District has experienced dramatic increases in investigations and prosecutions within these priorities, including the extensive use of Title III wiretaps and unprecedented law enforcement information sharing through the innovative Law Enforcement Information Exchange (LInX). The expansion of this program under the leadership of U.S. Attorneys and the Attorney General's Advisory Committee ranks among my most satisfying and rewarding endeavors, and I hope and trust the Department will continue to lead this critical effort to combat terrorism and organized crime that transcends jurisdictional boundaries.

I have been privileged to know you longer than most of our colleagues. I deeply admire your service as Texas Supreme Court Justice and White House Counsel, and am grateful for your support and friendship during my prior service at Legal Services Corporation and as United States Attorney. You have my best wishes for every continued success, and to you and all of your family I send my prayers for a joyous Christmas and all of the blessings of the New Year.

Sincerely,

John McKay
United States Attorney

EOUSA0000000021



U.S. Department of Justice

*United States Attorney
Western District of Washington*

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-2054

December 14, 2006

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I hereby submit my resignation as United States Attorney for the Western District of Washington, effective midnight January 26, 2007.

It has been my privilege to serve with you during these challenging times for our country. I am deeply appreciative of your faith and confidence in me and our District's talented prosecutors, trial attorneys, support staff and law enforcement personnel as we have worked to secure this district from terrorism and violent crime.

As always, you are in my prayers as you continue to lead our country, and to these I add my wishes to you, Mrs. Bush and all of your family for a happy and joyous Christmas.

Sincerely,

John McKay
United States Attorney

EOUSA000000022



U. S. Department of Justice

United States Attorney
District of Arizona2 Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408(602) 514-7500
FAX (602) 514-7670

December 18, 2006

The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

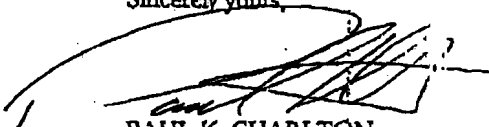
Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the District of Arizona of the United States, effective midnight January 31, 2007. It has been a great honor and privilege to have served as a United States Attorney.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career.

I wish you the best of luck and success.

Sincerely yours,


PAUL K. CHARLTON
United States Attorney
District of Arizona



U. S. Department of Justice

*United States Attorney
District of Arizona*

2 Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408

(602) 514-7500
FAX (602) 514-7670

December 18, 2006

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of Arizona of the United States, effective midnight January 31, 2007.

I deeply appreciate the opportunity you have given me to serve as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely yours,

PAUL K. CHARLTON
United States Attorney
District of Arizona



U.S. Department of Justice

United States Attorney
Eastern District of Arkansas

425 W. Capitol Avenue, Suite 500
Little Rock, Arkansas 72201

December 19, 2006

Attorney General Alberto R. Gonzales
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Judge Gonzales:

I am hereby submitting my resignation as United States Attorney for the Eastern District of Arkansas, effective ten o'clock in the morning (10:00 a.m.) December 20, 2006. It has been a great honor and privilege to have served these past five years as a United States Attorney by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my career. Thank you for your support and the support of the Department of Justice during my tenure. Your visit to my district in July 2005 inspired our entire staff. On a personal level, I enjoyed that opportunity to get to know you a little better. Your leadership has been marvelous.

I deeply appreciate the opportunity to have served as the United States Attorney for the Eastern District of the United States. I wish you the best of luck and success.

Sincerely,

Bud Cummins
United States Attorney
Eastern District of Arkansas

BC/clb



U.S. Department of Justice

United States Attorney
Eastern District of Arkansas

425 W. Capitol Avenue, Suite 500
Little Rock, Arkansas 72201

December 19, 2006

The Honorable George W. Bush
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Eastern District of Arkansas, effective ten o'clock in the morning (10:00 a.m.) December 20, 2006.

I deeply appreciate the opportunity to have served as United States Attorney for five years. I wish you and your administration the best of luck and success.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bud Cummins".

Bud Cummins
United States Attorney
Eastern District of Arkansas

BC/clb



U.S. Department of Justice

Carol C. Lam
United States Attorney
Southern District of California

(619) 557-5690
Fax (619) 557-5782

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
321 South Waterman Avenue
Room 204
El Centro, California 92243-2215

January 16, 2007

Honorable Alberto R. Gonzales
The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the Southern District of California, effective midnight February 15, 2007. It has been a great honor and privilege to have served these past four years as a United States Attorney by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. I deeply appreciate the opportunity to have served as the United States Attorney for the Southern District of California. I wish you all the best.

Sincerely,

CAROL C. LAM
United States Attorney

000027



U.S. Department of Justice

Carol C. Lam
United States Attorney
Southern District of California

(619) 537-5690
Fax (619) 537-3782

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-3893

Imperial County Office
321 South Waterman Avenue
Room 204
El Centro, California 92243-2215

January 16, 2007

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Southern District of California, effective midnight February 15, 2007. It has been a great honor and privilege to have served these past four years as a United States Attorney under your appointment.

I deeply appreciate the opportunity to have served as the United States Attorney for the Southern District of California. I wish you and your administration the best of luck and success.

Sincerely,

CAROL C. LAM
United States Attorney

000028



U.S. Department of Justice

*United States Attorney
District of Nevada*

*Daniel G. Bogden
United States Attorney*

*333 Las Vegas Boulevard South
Suite 3000
Las Vegas, Nevada 89101*

*Telephone (702) 388-6336
FAX: (702) 388-6296*

January 17, 2007

The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the District of Nevada, effective midnight February 28, 2007. It has been a great honor and privilege to have served the past five and one-half years as a United States Attorney, initially by appointment of Attorney General John Ashcroft and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

I deeply appreciate the opportunity to have served as the United States Attorney for the District of Nevada. I wish you the best of luck and success.

Sincerely,

DANIEL G. BOGDEN
United States Attorney
District of Nevada



U.S. Department of Justice

United States Attorney
District of Nevada

Daniel G. Bogden
United States Attorney

333 Las Vegas Boulevard South
Suite 3000
Las Vegas, Nevada 89101

Telephone (702) 388-6336
FAX: (702) 388-6296

January 17, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of Nevada, effective midnight February 28, 2007.

I deeply appreciate the outstanding opportunity to have served as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely,

DANIEL G. BOGDEN
United States Attorney
District of Nevada

000030



U.S. Department of Justice

David C. Iglesias

*United States Attorney
District of New Mexico*

REPLY TO:
David C. Iglesias
Direct: (505) 224-1459

*Post Office Box 607
Albuquerque, New Mexico 87103*

*(505) 346-7274
(505) 346-7224
FAX (505) 346-6883*

January 17, 2007

Honorable Alberto Gonzales
The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the District of New Mexico, effective midnight February 28, 2007. It has been a great honor and privilege to have served these past five and a half years as a United States Attorney. I will never forget the simple kindness you afforded me when you were White House Counsel and you took the time to meet with me in December, 2001. This simple act spoke volumes of your character. As the son of an immigrant father from Panama, this job has been the culmination of the American dream.

It was a tremendous honor to serve for a trailblazer like yourself. Thank you for making the two trips out to New Mexico to visit with me and my office. I have loved this job and am honored to preside over the biggest corruption cases in New Mexico history. I have done my part to make New Mexico a better place and now I leave it to someone else to continue the struggle for justice.

I respectfully recommend FAUSA Larry Gomez to serve as Interim United States Attorney. He has loyally served this administration and has previously been Interim United States Attorney between the first Bush administration and Clinton administration.

I wish you the best in your future endeavors. Thank you for your service to our great country. When you leave office, I will be sending you a token of my appreciation—a hand-made mola my cousin in Panama made for you. I think you will like it. Vaya con Dios.

Sincerely,

D. C. Iglesias

DAVID C. IGLESIAS
United States Attorney
District of New Mexico

DCI:lg

000031



U.S. Department of Justice

David C. Iglesias

*United States Attorney
District of New Mexico*

REPLY TO:
David C. Iglesias
Direct: (505) 224-1459

Post Office Box 607
Albuquerque, New Mexico 87103

(505) 346-7274
(505) 346-7224
FAX (505) 346-6883

January 17, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of New Mexico, effective midnight February 28, 2007.

I knew when I first met you at the El Pinto restaurant in Albuquerque, New Mexico in the Summer of 2000, that I wanted to be part of your team. I deeply appreciate the opportunity to have served as United States Attorney and being part of your administration in a watershed period of America's history. Along with my service in the United States Navy, I count being U.S. Attorney as my greatest honor. Thank you for giving me a chance to give back to a country that has given me so much. As the son of an immigrant father from Panama, I know the American dream lives on.

I pray for you frequently and trust the Almighty grant you the wisdom of Solomon during the rest of your administration.

Very Respectfully,

D.C. Iglesias
DAVID C. IGLESIAS
United States Attorney
District of New Mexico

DCI:lg

1143072
DA



U.S. Department of Justice

Margaret M. Chiara
United States Attorney
Western District of Michigan

5th Floor, The Law Building
330 Ionia Avenue, NW
Grand Rapids, Michigan 49503

Mailing Address:
United States Attorney's Office
Post Office Box 208
Grand Rapids, Michigan 49501-0208

Telephone (616) 456-2404
Facsimile (616) 456-2408

February 23, 2007

Attorney General Alberto Gonzales
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Gonzales:

I am hereby submitting my resignation as United States Attorney for the Western District of Michigan. My resignation is effective midnight March 16, 2007.

It has been an honor to serve as United States Attorney for the past five years. I am proud of the many accomplishments we have achieved in the Western District of Michigan during my tenure.

Sincerely,

A handwritten signature in cursive script that reads "Margaret M. Chiara".

MARGARET M. CHIARA
United States Attorney

EOUSA000000033

Battle, Michael (USAE0)

From: Iglesias, David C. (USANM)
Sent: Thursday, February 08, 2007 4:17 PM
To: Battle, Michael (USAE0)
Subject: RE: Message to USAs

Buddy, we had super times and made a difference in our districts! I've got no regrets and bear no ill will towards anyone. I'll be announcing my next step in a couple of weeks. Your friend always,
David

-----Original Message-----

From: Battle, Michael (USAE0)
Sent: Wednesday, February 07, 2007 8:31 PM
To: Iglesias, David C. (USANM)
Subject: RE: Message to USAs

David,
Thanks, hearing from means a lot to me. Hey, we had some good times didn't we? I wish you all the best, I will be watching. It's going to be exciting to see what you do next.
Take care, your friend for life.

-----Original Message-----

From: Iglesias, David C. (USANM)
Sent: Wednesday, February 07, 2007 05:00 PM Eastern Standard Time
To: Battle, Michael (USAE0)
Subject: RE: Message to USAs

Mike: I wish you Godspeed and success, my friend. I really appreciate how you helped out my district during your tenure @ EOUSA and I don't envy some of your duties since I know you are a good and honorable man. Please look me up if you're ever in New Mexico.
Regards,
David

From: Battle, Michael (USAE0)
Sent: Wednesday, February 07, 2007 2:40 PM
To: USAE0-USAttorneysOnly
Subject: Message to USAs

Dear Friends:

I have mixed feelings in announcing that I will be leaving the Executive Office for United States Attorneys on March 16, 2007. As you all know, being the United States Attorney is the best job there is. To couple that with serving as Director of EOUSA is more than I could have ever imagined. I feel blessed for having had the opportunity to be your colleague whether during my tenure as a United States Attorney or as Director of EOUSA.

As I noted to staff here at EOUSA, beginning with my arrival, I was consistently impressed with the talent and effort of each and every member of this organization. As I have said to many of you, if I had known then what I know now, I think I would have been better prepared for the challenges of being a United States Attorney. I relate this because I know first hand that the staff at EOUSA are dedicated to your success. I encourage you to continue to rely on EOUSA as a resource that supports your mission.

The opportunity to serve as a United States Attorney and as the Director of EOUSA has been humbling for me as well. I feel that you represent the very best and brightest, and many of you, like myself, became a United States Attorney at a time when our country and all that it stands for had been viscously attacked. Our charge was, and continues to be, to prevent that from ever happening again and to bring those responsible to justice. I know in my heart we will prevail.

I consider myself fortunate to have been your colleague. I wish you continued success as you serve the United States Attorney community, the Department, and the American people. Although I will miss working with you, EOUSA, the Department, and the unique challenges of a United States Attorney and Director of EOUSA, I am excited to return to the practice of

law. I have decided to join as a partner the law firm of Fulbright & Jaworski. My office is located at 801 Pennsylvania Avenue, N.W., Washington, DC; website: www.fulbright.com; phone number: (202) 662-0200. It has been an honor and privilege to serve with you. Thank you for all the kindnesses you have shown me.
All the best.
Michael A. Battle

Battle, Michael (USAE0)

From: Lam, Carol (USACAS)
Sent: Friday, February 16, 2007 12:46 AM
To: USAE0-USAttorneysOnly
Subject: Contact information

Colleagues,

I'm signing off in a couple of hours, so I wanted to pass along my contact information. Thank you for your collegiality and comraderie. It has been a privilege serving with you.

Warm regards,

Carol

Contact information:

(cell)

(Beginning February 26, 2007):

Carol Lam

Senior Vice-President and Legal Counsel

QUALCOMM Incorporated

5775 Morehouse Drive

San Diego, CA 92121

clam@qualcomm.com

(858) 651-8384

Battle, Michael (USAE0)

From: carol lam;
Sent: Sunday, March 04, 2007 4:53 PM
To: Battle, Michael (USAE0)

Mike,

This is to inform you that I have been subpoenaed to testify before the House Committee on the Judiciary, Subcommittee on Administration and Commerce, on Tuesday, March 6 at 2 pm. I have also been asked to testify before the Senate Judiciary Committee at 10 am the same day.

Carol Lam

McGowan, Ashley (USAE0)

From: Hardos, Debbie (USAE0)
Sent: Wednesday, January 24, 2007 3:19 PM
To: Nowacki, John (USAE0); McGowan, Ashley (USAE0)
Subject: NM Resignation Letters

Attachments: Resignation Letters.pdf

I just received Iglesias's resignation letters effective 2/28/07. Attached are copies:



Resignation
Letters.pdf (45 KB...



U.S. Department of Justice

David C. Iglesias

*United States Attorney
District of New Mexico*

REPLY TO:
David C. Iglesias
Direct: (505) 224-1459

Post Office Box 607
Albuquerque, New Mexico 87103

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FAX (505) 346-6883

January 17, 2007

Honorable Alberto Gonzales
The Attorney General
United States Department of Justice
Main Justice Building, Room 5111
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the District of New Mexico, effective midnight February 28, 2007. It has been a great honor and privilege to have served these past five and a half years as a United States Attorney. I will never forget the simple kindness you afforded me when you were White House Counsel and you took the time to meet with me in December, 2001. This simple act spoke volumes of your character. As the son of an immigrant father from Panama, this job has been the culmination of the American dream.

It was a tremendous honor to serve for a trailblazer like yourself. Thank you for making the two trips out to New Mexico to visit with me and my office. I have loved this job and am honored to preside over the biggest corruption cases in New Mexico history. I have done my part to make New Mexico a better place and now I leave it to someone else to continue the struggle for justice.

I respectfully recommend FAUSA Larry Gomez to serve as Interim United States Attorney. He has loyally served this administration and has previously been Interim United States Attorney between the first Bush administration and Clinton administration.

I wish you the best in your future endeavors. Thank you for your service to our great country. When you leave office, I will be sending you a token of my appreciation—a hand-made mola my cousin in Panama made for you. I think you will like it. Vaya con Dios.

Sincerely,

D. C. I.

DAVID C. IGLESIAS
United States Attorney
District of New Mexico

DCI:lg



U.S. Department of Justice

David C. Iglesias

*United States Attorney
District of New Mexico*

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January 17, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of New Mexico, effective midnight February 28, 2007.

I knew when I first met you at the El Pinto restaurant in Albuquerque, New Mexico in the Summer of 2000, that I wanted to be part of your team. I deeply appreciate the opportunity to have served as United States Attorney and being part of your administration in a watershed period of America's history. Along with my service in the United States Navy, I count being U.S. Attorney as my greatest honor. Thank you for giving me a chance to give back to a country that has given me so much. As the son of an immigrant father from Panama, I know the American dream lives on.

I pray for you frequently and trust the Almighty grant you the wisdom of Solomon during the rest of your administration.

Very Respectfully,

DAVID C. IGLESIAS
United States Attorney
District of New Mexico

DCI:lg

McGowan, Ashley (USAE0)

From: Hardos, Debbie (USAE0)
Sent: Friday, February 16, 2007 9:20 AM
To: McGowan, Ashley (USAE0)
Subject: Fw: Condensed Reason for Resignation for Daniel Bogden

Ash:
Pls add this to the info I gave you re: Bogden for John's review.
Thanks,
D

-----Original Message-----

From: Mann, Katherine (USAE0) <KMann@usa.doj.gov>
To: Hardos, Debbie (USAE0) <DHardos@usa.doj.gov>
CC: Dunn, Jean (USAE0) <JDunn@usa.doj.gov>; Smith, Mike (USAE0) <MSmith1@usa.doj.gov>
Sent: Fri Feb 16 09:07:11 2007
Subject: RE: Condensed Reason for Resignation for Daniel Bogden

Debbie,

I checked with Jean about changing the reason to "Term expired effective 10-28-05. Employee was in a holdover status."

Jean reminded me, we can't change the employee's reason for resignation. We can only condense it. Jean suggested a more condensed version, "Requested to step down."

Let me know if this is OK.

Thanks,

Kit

From: Hardos, Debbie (USAE0)
Sent: Tuesday, February 13, 2007 1:33 PM
To: Mann, Katherine (USAE0)
Subject: RE: Condensed Reason for Resignation for Daniel Bogden

Let's talk on Wednesday. How do USAs typically respond to this?

From: Mann, Katherine (USAE0)
Sent: Tuesday, February 13, 2007 10:07 AM
To: Hardos, Debbie (USAE0)
Cc: Blair, Tina (USAE0)
Subject: Condensed Reason for Resignation for Daniel Bogden

Debbie,

The paragraph will not fit on the SF-50. Can you check with John Nowacki to see if this condensed reason is OK?

"Received request from EOUSA Director to step down as U.S. Attorney."

Thanks,

Kit

Murphy, Sean (USAE0)

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:29 PM
To: Battle, Michael (USAE0); Nowacki, John (USAE0)
Cc: Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Elston, Michael (ODAG)
Subject: RE: Independence of US Attorneys - testimony

Importance: High

Attachments: draft DAG testimony -- USAs hearing.doc



draft DAG
testimony -- USAs he.

Mike/John, here's my draft outline for DAG testimony at next week's hearing. Thanks for working on this. Look forward to seeing your draft. Thx.

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 6:21 PM
To: Sampson, Kyle; Scott-Finan, Nancy; Goodling, Monica
Subject: RE: Independence of US Attorneys - testimony

Oral statement will be 5 minutes, though the DAG could go longer. The written can be a longer still if necessary to cover the subject.

-----Original Message-----

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:18 PM
To: Scott-Finan, Nancy; Goodling, Monica
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys - testimony

Working on it.

You tell me: how long would the subcommittee want his statement to be?
10 minutes? 5?

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 6:12 PM
To: Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard

Subject: FW: Independence of US Attorneys - testimony

Kyle,
Do you have an outline already available? And, how long would you like the statement to be? Thanks.
Nancy

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 5:51 PM
To: Scott-Finan, Nancy; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony

EOUSA will take the initial stab at testimony following receipt of an outline from Kyle Sampson.

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 5:51 PM
To: Hertling, Richard; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony

Ryan, have you had a chance to check with Rachel?
Thanks.
Nancy

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 12:01 PM
To: Seidel, Rebecca; Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony

Whoever drafts it, the testimony needs to include a sentence stating that DOJ is currently reviewing the issue of whether the appointment of an interim US Attorney by the judicial branch is constitutional.

-----Original Message-----

From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:58 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard; Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony
Importance: High

We have to figure out asap because the testimony needs to go into DOJ clearance TOMORROW (because we have to get to committee 48 hours in advance, so needs to get to Committee Monday, so OMB needs it Wed).

-----Original Message-----

From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:56 AM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

I'll raise it with Rachel. She wanted to ensure that the person who is working on the views letter went back to the crime initiative ASAP; and there's no reason for OLP rather than EOUSA to work on drafting testimony if we're reassigning it to someone new anyway.

-----Original Message-----

From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:38 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

Richard thought OLP was doing both the views letter and the testimony, makes sense one can morph into the other.

-----Original Message-----

From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:34 AM
To: Scott-Finan, Nancy
Cc: Seidel, Rebecca
Subject: Re: Independence of US Attorneys

I don't recall anything about any testimony, and OLP probably should not draft it anyway. (RAH was of the view that this was a good project for

EOUSA.) We'll be circulating a draft views letter today.
RWB

-----Original Message-----

From: Scott-Finan, Nancy
To: Bounds, Ryan W (OLP)
CC: Seidel, Rebecca
Sent: Mon Jan 29 11:29:56 2007
Subject: Independence of US Attorneys

Ryan,
How are we doing on the views letter and the testimony. It is my understanding that OLP is drafting both and that the DAG will be testifying. Under the Committee rules, since the hearing was noticed two weeks out, our testimony is due on the Hill a week from today. Thanks much.
Nancy

Draft Testimony for
Deputy Attorney General
Paul McNulty

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

OUTLINE

I. The role of the U.S. Attorney

- Chief federal law enforcement officer in the district
- Law enforcement/Prosecutor
- Manager/executor of Administration's priorities

II. U.S. Attorney appointments

- History of U.S. Attorney appointments
 - Generally
 - In Bush Administration
- Administration is committed to having Senate-confirmed U.S. Attorney in every district
 - Evidence of this
 - Examples
- U.S. Attorneys serve at pleasure of the President
 - May be removed for any reason or no reasons
 - Appropriate reasons to remove (or ask or encourage to resign): malfeasance, management issues, etc.
 - Inappropriate reasons to remove (or ask or encourage to resign): to influence investigation or prosecution

III. The Feinstein bill/interim U.S. Attorney appointments

- ~~Amendment to § 546 was necessary and appropriate~~
 - Constitutional concerns
 - Practical/policy concerns
- Administration's standard practice in making interim U.S. Attorney appointments
 - DOJ employee
 - Preferably someone from within the office (though exceptions where warranted)

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- Erik Peterson – Western District of Wisconsin;
- Charles Rosenberg – Eastern District of Virginia;
- Thomas Anderson – District of Vermont;
- Martin Jackley – District of South Dakota;
- Alexander Acosta – Southern District of Florida;
- Troy Eid – District of Colorado;
- Phillip Green – Southern District of Illinois;
- George Holding – Eastern District of North Carolina;
- Sharon Potter – Northern District of West Virginia;
- Brett Tolman – District of Utah;
- Rodger Heaton – Central District of Illinois;
- Deborah Rhodes – Southern District of Alabama;
- Rachel Paulose – District of Minnesota;
- John Wood – Western District of Missouri; and
- Rosa Rodriguez-Velez – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 11 new U.S. Attorney vacancies that have arisen. For five of the 11 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made). Those districts are:

- Central District of California – FAUSA George Cardona is acting United States Attorney (Cardona is not a candidate for presidential nomination; a nomination is not yet ready);
- Southern District of Illinois – FAUSA Randy Massey is acting United States Attorney (Massey is not a candidate for presidential nomination; a nomination was made last Congress, but confirmation did not occur);

- **Northern District of Iowa** – FAUSA Judi Whetstine is acting United States Attorney (Whetstine is not a candidate for nomination and is retiring this month, necessitating an Attorney General appointment; nomination is not yet ready);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Valdrini was not a candidate for presidential nomination; another individual was nominated and confirmed).

For six of the 11 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL’S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of nine times since the authority was amended in March 2006. In two of the nine cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA’s 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same

FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick (Dedrick has expressed interest in presidential nomination; nomination is not yet ready).

In one case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen (Cohen is not a candidate for presidential nomination; nomination is not yet ready).

In the five remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned (Griffin has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has expressed interest in presidential nomination; nomination is not yet ready);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court (Stecher has expressed interest in presidential nomination; nomination is not yet ready);
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned (Morford has expressed interest in presidential nomination; nomination is not yet ready); and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (Schlozman expressed interest in presidential appointment; someone else was nominated).

TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

U.S. Attorneys Serve at the Pleasure of the President:

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation.

The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

The Administration Is Nominating Candidates for U.S. Attorney Positions:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 11 vacancies have been created. Of those 11 vacancies, the Administration nominated candidates to fill five of these positions (three were confirmed to date) and has interviewed candidates for the other six positions – all in consultation with home-state Senators.

The 11 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 5 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
 - We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
 - Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.
 - The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.
 - Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.
-

Murphy, Sean (USAE0)

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:50 PM
To: Nowacki, John (USAE0)
Subject: FW: US Attorney appointments
Attachments: US Attorney Talking Points.doc; US Attorney language.doc

John, wanted you to have this -- for the draft DAG testimony.

From: Mercer, William W
Sent: Monday, January 29, 2007 1:17 PM
To: Moschella, William
Cc: McNulty, Paul J; Sampson, Kyle; Elston, Michael (ODAG)
Subject: FW: US Attorney appointments

I promised some talkers based upon the Bell/Meador and Wiener articles. Here they are.

From: O'Quinn, John C
Sent: Friday, January 26, 2007 2:52 PM
To: Mercer, William W
Cc: McDonald, Esther Slater
Subject: US Attorney appointments

Bill,

Attached are 2 pages of talking points on why the AG and not courts should be appointing interim US Attorneys. Also attached is a 1 page proposal that would make the appointment of interim US Attorneys by the AG more or less consistent with the appointment of persons as "acting" under the Vacancies Reform Act. It would give the AG a lot of breathing space on appointing interim US Attorneys, but make it so that appointments were not indefinite; it would also give the Senate incentive to act on nominations. Note a different approach to consider -- if section 546 were simply repealed altogether, that the provisions of the Vacancies Reform Act would apply (5 USC 3345), and the President could simply name acting US Attorneys just as he does with other nominated/confirmed executive branch positions.

<<US Attorney Talking Points.doc>> <<US Attorney language.doc>>

John C. O'Quinn
Deputy Associate Attorney General
950 Penn Ave, NW, Room 5722
Washington, DC 20530
202 514-9500
John.C.O'Quinn@usdoj.gov

Murphy, Sean (USAE0)

From: Nowacki, John (USAE0)
Sent: Monday, January 29, 2007 7:06 PM
To: Murphy, Sean (USAE0)
Subject: FW: Independence of US Attorneys - testimony

Importance: High

Attachments: draft DAG testimony -- USAs hearing.doc



draft DAG
testimony -- USAs he.

-----Original Message-----

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:29 PM
To: Battle, Michael (USAE0); Nowacki, John (USAE0)
Cc: Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Elston, Michael (ODAG)
Subject: RE: Independence of US Attorneys - testimony
Importance: High

Mike/John, here's my draft outline for DAG testimony at next week's hearing. Thanks for working on this. Look forward to seeing your draft. Thx.

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 6:21 PM
To: Sampson, Kyle; Scott-Finan, Nancy; Goodling, Monica
Subject: RE: Independence of US Attorneys - testimony

Oral statement will be 5 minutes, though the DAG could go longer. The written can be a longer still if necessary to cover the subject.

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From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:18 PM
To: Scott-Finan, Nancy; Goodling, Monica
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys - testimony

Working on it.

You tell me: how long would the subcommittee want his statement to be?
10 minutes? 5?

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 6:12 PM
To: Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard
Subject: FW: Independence of US Attorneys - testimony

Kyle,
Do you have an outline already available? And, how long would you like the statement to be? Thanks.
Nancy

-----Original Message-----

From: Hertling, Richard
Sent: Monday, January 29, 2007 5:51 PM
To: Scott-Finan, Nancy; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony

EOUSA will take the initial stab at testimony following receipt of an outline from Kyle Sampson.

-----Original Message-----

From: Scott-Finan, Nancy
Sent: Monday, January 29, 2007 5:51 PM
To: Hertling, Richard; Seidel, Rebecca; Bounds, Ryan W (OLP)
Cc: Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony

Ryan, have you had a chance to check with Rachel?
Thanks.
Nancy

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From: Hertling, Richard
Sent: Monday, January 29, 2007 12:01 PM
To: Seidel, Rebecca; Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony

Whoever drafts it, the testimony needs to include a sentence stating that DOJ is currently reviewing the issue of whether the appointment of an interim US Attorney by the judicial branch is constitutional.

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From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:58 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard; Nowacki, John (USAE0)
Subject: RE: Independence of US Attorneys - testimony
Importance: High

We have to figure out asap because the testimony needs to go into DOJ clearance TOMORROW (because we have to get to committee 48 hours in advance, so needs to get to Committee Monday, so OMB needs it Wed).

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From: Bounds, Ryan W (OLP)
Sent: Monday, January 29, 2007 11:56 AM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

I'll raise it with Rachel. She wanted to ensure that the person who is working on the views letter went back to the crime initiative ASAP, and there's no reason for OLP rather than EOUSA to work on drafting testimony if we're reassigning it to someone new anyway.

-----Original Message-----

From: Seidel, Rebecca
Sent: Monday, January 29, 2007 11:38 AM
To: Bounds, Ryan W (OLP); Scott-Finan, Nancy
Cc: Hertling, Richard
Subject: RE: Independence of US Attorneys

Richard thought OLP was doing both the views letter and the testimony, makes sense one can morph into the other.

-----Original Message-----

From: Bounds, Ryan W (OLP)

Sent: Monday, January 29, 2007 11:34 AM
To: Scott-Finan, Nancy
Cc: Seidel, Rebecca
Subject: Re: Independence of US Attorneys

I don't recall anything about any testimony, and OLP probably should not draft it anyway. (RAH was of the view that this was a good project for EOUSA.) We'll be circulating a draft views letter today.
RWB

-----Original Message-----

From: Scott-Finan, Nancy
To: Bounds, Ryan W (OLP)
CC: Seidel, Rebecca
Sent: Mon Jan 29 11:29:56 2007
Subject: Independence of US Attorneys

Ryan,
How are we doing on the views letter and the testimony. It is my understanding that OLP is drafting both and that the DAG will be testifying. Under the Committee rules, since the hearing was noticed two weeks out, our testimony is due on the Hill a week from today.
Thanks much.
Nancy

Draft Testimony for
Deputy Attorney General
Paul McNulty

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

OUTLINE

I. The role of the U.S. Attorney

- Chief federal law enforcement officer in the district
- Law enforcement/Prosecutor
- Manager/executor of Administration's priorities

II. U.S. Attorney appointments

- History of U.S. Attorney appointments
 - Generally
 - In Bush Administration
- Administration is committed to having Senate-confirmed U.S. Attorney in every district
 - Evidence of this
 - Examples
- U.S. Attorneys serve at pleasure of the President
 - May be removed for any reason or no reasons
 - Appropriate reasons to remove (or ask or encourage to resign): malfeasance, management issues, etc.
 - Inappropriate reasons to remove (or ask or encourage to resign): to influence investigation or prosecution

III. The Feinstein bill/interim U.S. Attorney appointments

- Amendment to § 546 was necessary and appropriate

 - Constitutional concerns
 - Practical/policy concerns
- Administration's standard practice in making interim U.S. Attorney appointments
 - DOJ employee
 - Preferably someone from within the office (though exceptions where warranted)

Murphy, Sean (USAE0)

From: Murphy, Sean (USAE0)
Sent: Monday, January 29, 2007 8:29 PM
To: Nowacki, John (USAE0)

Attachments: draft DAG testimony .doc



draft DAG
testimony .doc (58 K)

Sampson's outline is in Black,
Proposed Testimony language is in Blue
Comments are in Red.

Sean P. Murphy
Policy Coordinator and Special Assistant to the Director
Executive Office for United States Attorneys
U.S. Department of Justice
950 Pennsylvania Ave. NW Suite 2248
Washington, DC 20530
(202) 353-3137

Draft Testimony for
Deputy Attorney General
Paul McNulty

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

OUTLINE

I. The role of the U.S. Attorney

- Chief federal law enforcement officer in the district
- Law enforcement/Prosecutor
- Manager/executor of Administration's priorities

United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

In pursuit of Department objectives, USAs manage large offices of federal prosecutors and report directly to the Deputy Attorney General and the Attorney general. USAs also represent the administration, the Attorney General, and federal law-enforcement resources in their respective communities. United States Attorneys are law enforcement officials and officers of the court who must carry out their responsibilities with strict impartiality. For these reasons, the Department is committed to having the best person discharging the responsibilities for the USA at all times in every district.

II. U.S. Attorney appointments

- History of U.S. Attorney appointments
 - Generally
 - In Bush Administration

Before last year's amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district courts was authorized to

appoint an interim USA. In cases where a Senate-confirmed USA could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in several recurring problems. For example, some district courts—recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim USA who would then have many matters before the court—refused to exercise the court's appointment authority. Such refusals required the AG to make multiple 120-day appointments. In contrast, other district courts—ignoring the oddity and inherent conflicts—sought to appoint as interim USAs wholly unacceptable candidates who did not have the appropriate qualifications or the necessary clearances.

In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the Attorney General's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a Presidentially-nominated, Senate-confirmed (PAS) United States Attorney. Whenever a United States Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.

- Administration is committed to having Senate-confirmed U.S. Attorney in every district
 - Evidence of this
 - Examples

Our record since the Attorney General-appointment authority was amended last year demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination. Specifically, since March 9, 2006, when the AG's appointment authority was amended, the Administration has nominated 15 individuals to serve as U.S. Attorney. 12 have been confirmed to date (Jan 29, 2007).

Specifically since March 9, 2006, when the appointment authority was amended, 11 vacancies have been created. Of those 11 vacancies, the Administration nominated candidates to fill five of these positions (three were confirmed to date) and has interviewed candidates for the other six positions – all in consultation with home-state Senators.

The 11 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 5 cases, the First Assistant was selected to lead the office and took over under

the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.

- In 5 cases, the Department selected another Department employee to serve as interim under the Attorney General appointment authority until such time as a nomination is submitted to the Senate. (we should consider stating how many of these AG Appoints went on to be Presidentially-appointed, such as Acosta was)
- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

- U.S. Attorneys serve at pleasure of the President
 - May be removed for any reason or no reasons
 - Appropriate reasons to remove (or ask or encourage to resign): malfeasance, management issues, etc.
 - Inappropriate reasons to remove (or ask or encourage to resign): to influence investigation or prosecution

United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively.

Like other high-ranking Executive Branch officials, United States Attorneys may be removed for any reason or no reason. On occasion, in an organization as large as the Justice Department, some United States Attorneys are removed, or are asked or encouraged to resign. This should come as no surprise.

Some Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more. Such discussions with United States Attorneys regarding their continued service generally are non-public, out of respect for those United States Attorneys; indeed, a public debate about the United States Attorneys that may have been asked or encouraged to resign only disserves their interests.

In any event, please be assured that United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

III. The Feinstein bill/interim U.S. Attorney appointments

- Amendment to § 546 was necessary and appropriate

- o Constitutional concerns
- o Practical/policy concerns

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. As you know, prior to last year's amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. Because the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

S. 214 appears to be aimed at solving a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having Senate-Confirmed USAs in every federal district. The Department's concern principle concern with this legislation is that it would be inappropriate. The Department of Justice is aware of no other federal agency for which federal judges rather than Executive Branch officials make staffing decisions. Moreover, the bill would diminish the Attorney General's ability to ensure that the nation's laws are duly enforced by requiring him to work closely with and through supervisory officials over whose selection he has no immediate influence.

S. 214 would institute a new appointee regime without allowing the Attorney General's authority under current law to be tested in practice. The bill would reverse last year's amendment to 28 U.S.C. Sec. 546 whereby the Attorney General is authorized to appoint an interim United States Attorney to serve until the position is filled by a candidate who has been confirmed by the Senate and appointed by the President in the normal course. Last year's amendment was meant to ensure that the Attorney General would be able to maintain the Department's uninterrupted law-enforcement efforts event in the event of a United States Attorney Vacancy that lasts longer than expected.

Appointments by Courts (even interim appointments) creates conflicting loyalties and conflicts of interests, and is unconstitutional. Former Carter Administration Attorney General Griffin Bell recommended to Congress that appointments of U.S. Attorneys be vested solely in the Attorney General to assure high quality in appointees, to minimize the stigma of political patronage, and to foster effective departmental management.

Court appointment of U.S. Attorneys threatens to undermine judicial impartiality and the appearance of impartiality and thrusts courts into partisan political battles. By selecting U.S. Attorneys, judges lose their institutional distance and impartiality as to whether charges are filed, dropped, or settled. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. See Wiener, *Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

More fundamentally, court appointment of U.S. Attorneys violates the separation of powers because it puts courts in the position of appointing subordinates charged with carrying out the President's duty to execute the laws—thus defeating the accountability of core executive branch officials intended under the Constitution.

- Administration's standard practice in making interim U.S. Attorney appointments
 - DOJ employee
 - Preferably someone from within the office (though exceptions where warranted)

The Administration has repeatedly demonstrated its commitment to having Senate-confirmed United States Attorneys in every federal district. Nevertheless, when a United States Attorney vacancy occurs for any reason, the Administration must first determine who will serve temporarily as United States Attorney until a new Senate-confirmed United States Attorney is appointed. Because of the importance of continuity in the office, the Administration often looks to the First Assistant United States Attorney or another senior manager in the office to serve as United States Attorney on an interim basis. Where neither the First Assistant United States Attorney nor another senior manager in the office is able or willing to serve as interim United States Attorney, or where relying on incumbents would not be appropriate in the circumstances, the Administration may look to other Department employees to serve as the interim United States Attorney. At no time, however, has the Administration sought to avoid the Senate Confirmation process by (1) appointing an interim United States Attorney and then (2) refusing to move forward, in consultation with the home-State Senators, on the selection, nomination, confirmation, and appointment of a new United States Attorney. The appointment of United States Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and the one that the Administration follows.

Our record since the AG-appointment authority was amended demonstrates that we are committed to working with the Senate to nominate candidates for United States Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.

END

Nowacki, John (USAEO)

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:29 PM
To: Battle, Michael (USAEO); Nowacki, John (USAEO)
Cc: Hertling, Richard; Scott-Finan, Nancy; Goodling, Monica; Elston, Michael (ODAG)
Subject: RE: Independence of US Attorneys - testimony

Importance: High

Attachments: draft DAG testimony -- USAs hearing.doc



draft DAG

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Cc: Seidel, Rebecca
Subject: Re: Independence of US Attorneys

I don't recall anything about any testimony, and OLP probably should not draft it anyway. (RAH was of the view that this was a good project for

EOUSA.) We'll be circulating a draft views letter today.
RWB

-----Original Message-----

From: Scott-Finan, Nancy
To: Bounds, Ryan W (OLP)
CC: Seidel, Rebecca
Sent: Mon Jan 29 11:29:56 2007
Subject: Independence of US Attorneys

Ryan,
How are we doing on the views letter and the testimony. It is my understanding that OLP is drafting both and that the DAG will be testifying. Under the Committee rules, since the hearing was noticed two weeks out, our testimony is due on the Hill a week from today. Thanks much.
Nancy

Draft Testimony for
Deputy Attorney General
Paul McNulty

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

OUTLINE

I. The role of the U.S. Attorney

- Chief federal law enforcement officer in the district
- Law enforcement/Prosecutor
- Manager/executor of Administration's priorities

II. U.S. Attorney appointments

- History of U.S. Attorney appointments
 - Generally
 - In Bush Administration
- Administration is committed to having Senate-confirmed U.S. Attorney in every district
 - Evidence of this
 - Examples
- U.S. Attorneys serve at pleasure of the President
 - May be removed for any reason or no reasons
 - Appropriate reasons to remove (or ask or encourage to resign): malfeasance, management issues, etc.
 - Inappropriate reasons to remove (or ask or encourage to resign): to influence investigation or prosecution

III. The Feinstein bill/interim U.S. Attorney appointments

- ~~Amendment to § 546 was necessary and appropriate~~
 - Constitutional concerns
 - Practical/policy concerns
- Administration's standard practice in making interim U.S. Attorney appointments
 - DOJ employee
 - Preferably someone from within the office (though exceptions where warranted)

Nowacki, John (USAE0)

From: Nowacki, John (USAE0)
Sent: Monday, January 29, 2007 6:52 PM
To: Sampson, Kyle
Subject: RE: US Attorney appointments

Great, thanks.

From: Sampson, Kyle
Sent: Monday, January 29, 2007 6:50 PM
To: Nowacki, John (USAE0)
Subject: FW: US Attorney appointments

John, wanted you to have this -- for the draft DAG testimony.

From: Mercer, William W
Sent: Monday, January 29, 2007 1:17 PM
To: Moschella, William
Cc: McNulty, Paul J; Sampson, Kyle; Elston, Michael (ODAG)
Subject: FW: US Attorney appointments

I promised some talkers based upon the Bell/Meador and Wiener articles. Here they are.

From: O'Quinn, John C
Sent: Friday, January 26, 2007 2:52 PM
To: Mercer, William W
Cc: McDonald, Esther Slater
Subject: US Attorney appointments

Bill,

Attached are 2 pages of talking points on why the AG and not courts should be appointing interim US Attorneys. ~~Also attached is a 1 page proposal that would make the appointment of interim US Attorneys by the AG more or less consistent with the appointment of persons as "acting" under the Vacancies Reform Act. It would give the AG a lot of breathing space on appointing interim US Attorneys, but make it so that appointments were not indefinite; it would also give the Senate incentive to act on nominations. Note a different approach to consider -- if section 546 were simply repealed altogether, that the provisions of the Vacancies Reform Act would apply (5 USC 3345), and the President could simply name acting US Attorneys just as he does with other nominated/confirmed executive branch positions.~~

<<US Attorney Talking Points.doc>> <<US Attorney language.doc>>

John C. O'Quinn
Deputy Associate Attorney General
950 Penn Ave, NW, Room 5722

EOUSA000000068

2/9/2007

Washington, DC 20530
202 514-9500
John.C.O'Quinn@usdoj.gov

EOUSA000000069

Nowacki, John (USAEO)

From: Nowacki, John (USAEO)
Sent: Tuesday, January 30, 2007 6:23 PM
To: Goodling, Monica
Subject: DRAFT Testimony

Attachments: DRAFT Testimony -- US Attorneys Hearing.doc

The draft testimony is attached; I promised it to OLA by seven o'clock. Thanks for taking a look.

On AZ, the office senior mgmt is at a funeral and we have not been able to reach anyone. Mike couldn't reach the judge, either. We have left messages for the judge, Charlton, and Knauss.



DRAFT Testimony --
US Attorney...

Nowacki, John (USAE0)

From: Scott-Finan, Nancy
Sent: Thursday, February 01, 2007 6:21 PM
To: Nowacki, John (USAE0)
Subject: FW: DAG McNulty Testimony - US Attorneys - Senate Judiciary 2-6-07
Attachments: ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneys(DOJredline).doc

From: Blackwood, Kristine
Sent: Thursday, February 01, 2007 12:48 PM
To: 'Angela_M._Simms@omb.eop.gov'
Cc: Scott-Finan, Nancy; Seidel, Rebecca; Elston, Michael (ODAG)
Subject: RE: DAG McNulty Testimony - US Attorneys - Senate Judiciary 2-6-07

<<ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneys(DOJredline).doc>> Hi Angie,

We made a few stylistic edits after we sent this off last night. I have redlined the changes so you can see them. Please let me know if you have any question.

Thanks for expediting this.

From: Blackwood, Kristine
Sent: Wednesday, January 31, 2007 8:47 PM
To: 'Angela_M._Simms@omb.eop.gov'; 'Richard_E._Green@omb.eop.gov'
Cc: Scott-Finan, Nancy; Seidel, Rebecca
Subject: DAG McNulty Testimony - US Attorneys - Senate Judiciary 2-6-07

<< File: ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneys.doc >> Angie, Richard,

Attached is the DOJ testimony for Tuesday's hearing. Please let us know if you have any question.

Thanks.

EOUSA000000071

3/9/2007



Department of Justice

STATEMENT

OF

PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

"PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?"

PRESENTED ON

FEBRUARY 6, 2007

EOUSA000000072

**Testimony
of**

**Paul J. McNulty
Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States Senate**

**“Is the Department of Justice Politicizing the Hiring and Firing of U.S.
Attorneys?”**

February 6, 2007

Chairman Schumer, Senator Sessions, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation’s laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are “the front-line troops charged with carrying out the Executive’s constitutional mandate to execute faithfully the laws in every federal judicial district.” As the chief federal law-enforcement officers in their districts, U.S. Attorneys

represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no

surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

Deleted: The Administration takes seriously its obligation to have the best person possible leading the office at any given time.

Deleted: U.S. Attorney

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven positions, and is waiting to receive names to set up interviews for one position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

Deleted: U.S. Attorney

Deleted: U.S. Attorney

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government's appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary

problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and

federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Deleted: rather than a court

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Nowacki, John (USAEO)

From: Scott-Finan, Nancy

Sent: Monday, February 05, 2007 10:57 AM

To: Goodling, Monica; Sampson, Kyle; Hertling, Richard; Seidel, Rebecca; Elston, Michael (ODAG); Moschella, William; Kirsch, Thomas; Nowacki, John (USAEO); Battle, Michael (USAEO)

Cc: Long, Linda E

Subject: FW: 2/6 Hearing Witness Testimony

Attachments: Levenson Testimony 2-6-07.pdf; Levenson Bio.pdf; White Testimony 2-6-07.pdf; White Bio.pdf

Attached is the testimony for the two other witnesses for tomorrow's hearing

cc: Linda for Paul

3/9/2007

EOUSA000000082

Nowacki, John (USAEO)

From: USDOJ- Office of Public Affairs
Sent: Tuesday, February 06, 2007 11:25 AM
To: USDOJ- Office of Public Affairs
Subject: PREPARED STATEMENT OF DEPUTY ATTORNEY GENERAL PAUL J. MCNULTY AT THE SENATE JUDICIARY COMMITTEE HEARING ON APPOINTMENTS AND RESIGNATIONS OF U.S. ATTORNEYS



Department of Justice

FOR IMMEDIATE RELEASE DAG

TUESDAY, FEBRUARY 6, 2007 (202) 514-2007

WWW.USDOJ.GOV TDD (202) 514-1888

PREPARED STATEMENT OF DEPUTY ATTORNEY GENERAL PAUL J. MCNULTY AT THE SENATE

JUDICIARY COMMITTEE HEARING ON APPOINTMENTS AND RESIGNATIONS OF U.S. ATTORNEYS

WASHINGTON, D.C.

Thank you, Mr. Chairman. I appreciate the opportunity to be here this morning and attempt to clear up the misunderstandings and misperceptions about the recent resignations of some United States Attorneys (USA), and to testify in strong opposition to S.214, a bill which would strip the Attorney General of the authority to make interim appointments to fill vacant USA positions.

As you know, I had the privilege of serving as a USA for 4 ½ years. It was the best job I ever had. That's something you hear a lot from former USAs – "Best job I ever had." In my case, Mr. Chairman, it was even better than serving as counsel on the House Crime Sub. under your leadership.

Why is being a USA such a great job? There are a variety of reasons, but I think it boils down to this. The USAs are the President's chief legal representatives in the 94 federal judicial districts. In my former district of Eastern Virginia, Supreme Court Chief Justice John Marshal was the first USA.

Being the President's chief legal representative means you are the face of the Justice Department in your district. Every police chief you support, every victim you comfort, every citizen you inspire or encourage, and, yes, every criminal who is prosecuted in your name, communicates to all of these people something significant about the priorities and values of both the President and the AG. At his inauguration, the President raises his right hand and solemnly swears to faithfully execute the office of the President of the United States. He fulfills this promise in no small measure through the men and

women he appoints as USAs. If the President and the Attorney General want to crack down on gun criminals or go after child pornographers and pedophiles, as this President and AG have ordered federal prosecutors to do, it's the USAs who have the privilege of making such priorities a reality. That's why it's the best job a lawyer can ever have. It's an incredible honor.

And this is why, Mr. Chairman, judges should not appoint USAs, as S.214 proposes. What could be clearer Executive Branch responsibilities than the AG's authority to temporarily appoint and for the President to nominate for Senate confirmation those who will execute the President's duties of office? S.214 doesn't even allow the AG to make ANY interim appointments, contrary to the law prior to the most recent amendment.

The indisputable fact is that USAs serve at the pleasure of the President. They come and they go for lots of reasons. Of the USAs appointed in my class at the beginning of this Administration, more than half are now gone. Turnover is not unusual and it rarely causes a problem because even though the job of USA is extremely important, the greatest assets of any successful USA are the career men and women who serve as AUSAs, victim-witness coordinators, paralegals, legal assistants, and administrative personnel. Their experience and professionalism ensures smooth continuity as the USA job transitions from one person to another.

Mr. Chairman, I conclude with these three promises to this Committee and the American people on behalf of the AG and myself:

1) We never have and never will seek to remove a USA to interfere with an ongoing investigation or prosecution. Such an act is contrary to the most basic values of our system of justice, the proud legacy of the Department of Justice, and our integrity as public servants.

2) In every single case, where a USA position is vacant, the Administration is committed to filling that position with a USA who is confirmed by the Senate. The AG's appointment authority has not, and will not, be used to circumvent the confirmation process. All accusations in this regard are contrary to the clear factual record. The statistics are all laid out in my written statement.

3) Through temporary appointments and nominations for Senate confirmation, the Administration will continue to fill USA vacancies with men and women who are well qualified to assume the important duties of this office.

Mr. Chairman, I appreciate your friendship and courtesy, and I am happy to respond to the Committee's questions.

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Nowacki, John (USAE0)

From: USDOJ- Office of Public Affairs
Sent: Tuesday, February 06, 2007 3:00 PM
To: USDOJ- Office of Public Affairs
Subject: WRITTEN STATEMENT OF DEPUTY ATTORNEY GENERAL PAUL J. McNULTY TO THE
SENATE JUDICIARY COMMITTEE FOR HEARING ON APPOINTMENTS AND RESIGNATIONS
OF U.S. ATTORNEYS



Department of Justice

FOR IMMEDIATE RELEASE DAG

TUESDAY, FEBRUARY 6, 2007 (202) 514-2007

WWW.USDOJ.GOV TDD (202) 514-1888

WRITTEN STATEMENT OF DEPUTY ATTORNEY GENERAL PAUL J. McNULTY TO THE SENATE

JUDICIARY COMMITTEE FOR HEARING ON APPOINTMENTS AND RESIGNATIONS OF U.S. ATTORNEYS

WASHINGTON, D.C.

Chairman Leahy, Senator Specter, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are "the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every federal judicial district." As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed

and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney.

Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

###

Nowacki, John (USAE0)

From: Nowacki, John (USAE0)
Sent: Tuesday, February 27, 2007 7:49 PM
To: Scott-Finan, Nancy
Subject: Draft HJC testimony

Attachments: DRAFT Moschella Testimony.doc

Nancy -- Will's draft testimony (integrating Kyle's edits and your suggested additions re H.R. 580) is attached.

-- John



DRAFT Moschella
Testimony.doc ...

Nowacki, John (USAE0)

From: Nowacki, John (USAE0)
Sent: Wednesday, February 28, 2007 5:46 PM
To: Scott-Finan, Nancy
Subject: RE: Draft HJC testimony

Thanks.

From: Scott-Finan, Nancy
Sent: Wednesday, February 28, 2007 5:45 PM
To: Nowacki, John (USAE0)
Subject: RE: Draft HJC testimony

No.
Will told me he would not have comments to me until tomorrow morning.

From: Nowacki, John (USAE0) [mailto:John.Nowacki@usdoj.gov]
Sent: Wednesday, February 28, 2007 5:39 PM
To: Scott-Finan, Nancy
Subject: RE: Draft HJC testimony

Has it gone to OMB yet?

From: Scott-Finan, Nancy
Sent: Tuesday, February 27, 2007 11:05 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica
Cc: Hertling, Richard; Silas, Adrien; Nowacki, John (USAE0)
Subject: FW: Draft HJC testimony

I am sending the revised testimony for your review and final comments before we send it to OMB.

Nancy



Department of Justice

STATEMENT

OF

WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

**"H.R. 580, RESTORING CHECKS AND BALANCES IN THE NOMINATION
PROCESS OF U.S. ATTORNEYS"**

PRESENTED ON

MARCH 6, 2007

EOUSA000000091

**Testimony
of**

**William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States House of Representatives**

“H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S. Attorneys”

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys.

The Department of Justice strongly opposes H.R. 580, the “Preserving United States Attorneys Independence Act of 2007.” H.R. 580 would significantly alter the manner in which U.S. Attorney vacancies are filled by completely removing the Attorney General’s authority to appoint interim U.S. Attorneys and allocating that authority to an entirely different branch of government. Under H.R. 580, the Attorney General would have no authority whatsoever to fill a U.S. Attorney vacancy on an interim basis—even one of short duration. Instead, only the district court would have this authority.

As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General and the Department of Justice before Americans in their district. U.S. Attorneys are not only prosecutors, however; they are government officials charged with managing and implementing the policies and

priorities of the Executive Branch. The Attorney General has set forth key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys' Offices to focus on a particular area of law enforcement.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion

to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, it is actually the career investigators and prosecutors who exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that

someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees. For example, in the District of Minnesota and the Northern District of Iowa, the First Assistant took federal retirement at or near the same time that the U.S. Attorney resigned, which required the Department to select another official to lead the office.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward—in consultation with home-State Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim

U.S. Attorneys, and 16 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 16 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the remaining positions—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

H.R. 580 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the

Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected. H.R. 580 would institute a new appointment regime without allowing the Attorney General's authority under current law to be tested in practice.

Prior to last year's amendment, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems

without any apparent benefit.

The Department's principal objection to H.R. 580 is that it would be inappropriate, and inconsistent with sound separation of powers principles, to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney under the circumstances described in the bill. We are aware of no other agency where federal judges—members of a separate branch of government—appoint on an interim basis senior, policymaking staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. See Wiener, *Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

H.R. 580 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Nowacki, John (USAE0)

From: Scott-Finan, Nancy
Sent: Thursday, March 01, 2007 11:34 AM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Hertling, Richard
Cc: Silas, Adrien; Nowacki, John (USAE0)
Subject: FW: Draft HJC testimony
Attachments: DRAFT Moschella Testimony.doc

I am recirculating for comments/additions the revised testimony that was sent around on Tuesday evening.



Department of Justice

STATEMENT

OF

**WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**"H.R. 580, RESTORING CHECKS AND BALANCES IN THE NOMINATION
PROCESS OF U.S. ATTORNEYS"**

PRESENTED ON

MARCH 6, 2007

**Testimony
of**

**William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States House of Representatives**

“H.R. 580, Restoring Checks and Balances in the Nomination Process of U.S. Attorneys”

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys.

The Department of Justice strongly opposes H.R. 580, the “Preserving United States Attorneys Independence Act of 2007.” H.R. 580 would significantly alter the manner in which U.S. Attorney vacancies are filled by completely removing the Attorney General’s authority to appoint interim U.S. Attorneys and allocating that authority to an entirely different branch of government. Under H.R. 580, the Attorney General would have no authority whatsoever to fill a U.S. Attorney vacancy on an interim basis—even one of short duration. Instead, only the district court would have this authority.

As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General and the Department of Justice before Americans in their district. U.S. Attorneys are not only prosecutors, however; they are government officials charged with managing and implementing the policies and

priorities of the Executive Branch. The Attorney General has set forth key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead the Department's efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. Unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys' Offices to focus on a particular area of law enforcement.

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to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after a U.S. Attorney's four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served longer than four years prior to being asked to resign.

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